

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. COMMODITY FUTURES TRADING  
COMMISSION,

ECF Case

Plaintiff,

Civil Action No. 12 CV 8791 (CM)

-against-

AFFIRMATION

ERIC MONCADA,  
BES CAPITAL LLC, and  
SERDIKA LLC,

Defendants.

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Richard M. Asche, an attorney licensed to practice before the Courts of the State of New York, affirms the following under penalties of perjury:

I am a member of the firm of Litman, Asche & Gioiella, LLP, attorneys for the defendant Eric Moncada. I make this affirmation in support of the motion by the defendant Eric Moncada to extend the deadline set forth in the Court's scheduling order (Exhibit A hereto) for filing defendant's expert report from July 31, 2013 to September 30, 2013, and to extend the discovery deadline from September 13, 2013 to October 15, 2013, and to extend the time for filing the pre-trial report from October 11, 2013 to October 31, 2013.

The reason for this request is that defendant's expert has had to digest and analyze a body of documentary evidence provided by the Commission in early May consisting of 80-90 GB. It would be practically impossible to print out the volume of information contained in the Government's document production, but I am advised by computer experts that 80-90 GB would print out to substantially more than one million pages of data. The documents set forth, inter

alia, not only trades but hundreds of thousands, if not millions, of bids and offers made over a period of several months.

In early May, upon receipt of the plaintiff's expert report (some 65 pages in length, including tables and appendices) containing significant detailed analysis of trades, sophisticated mathematical and statistical technologies, I began searching for a defense expert. I was able to locate an expert, Steven E. Wollack, in mid-June. Attached as Exhibit B is a copy of Mr. Wollack's curriculum vitae.

Initially, Mr. Wollack advised me that he had difficulty downloading and working with the Government's computerized information, which was contained in a separate hard drive and which was password protected. Ultimately, he was able to overcome these glitches and with the assistance of the plaintiff was able to download the appropriate data. Mr. Wollack advises me that he is in the final stages of completing his report, and that the report will be ready to be produced to plaintiff by at the latest the end of September. (See attached letter of Mr. Wollack, Exhibit C). If the plaintiff wishes to depose Mr. Wollack, he will be available in early October. The pre-trial order, which is currently due on October 11, could be filed by October 31.

The length of time it has taken for defendant's expert to digest the massive materials produced by the Government should come as no surprise to the Government. When the parties appeared at the initial conference in this case, the parties jointly recommended a year for discovery to be followed by six months for expert reports and expert discovery (Exhibit D). At the time we had no idea of the size of the Government's document production. The Court stated that a six month time frame was adequate.

The Commission has been investigating defendant since 2010. At the time of the commencement of this case, it had been collecting and analyzing data for nearly three years. By

contrast, defendant has had only a few months to review the data and produce an expert report. (The data was not available to defendant until produced by the Commission).

All discovery other than defendant's equal discovery has been completed.

In view of the fact that the requested extension will not delay a trial in this case, the Government cannot claim any prejudice by the delay. (The defendant is not currently engaged in trading commodities).

Conclusion

Defendant respectfully requests that the deadline for submission of the defendant's expert report be extended to September 30; that the deadline for discovery be extended to October 15, and that the pre-trial order be extended from October 11 to October 31.

Dated: New York, New York  
September 10, 2013

/s/ Richard M. Asche  
Richard M. Asche